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Case No. 00-391

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 2000

STATE OF FLORIDA,

Petitioner,

vs.

ROBERT A. THOMAS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

RESPONDENT'S BRIEF IN OPPOSITION

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25 pp

QUESTION PRESENTED

WHETHER THE SEARCH OF RESPONDENT'S VEHICLE WAS CONSTITUTIONAL WHERE THE OFFICER DID NOT CONFRONT OR SIGNAL CONFRONTATION WITH RESPONDENT UNTIL AFTER THE RESPONDENT VOLUNTARILY EXITED THE VEHICLE AND THE OFFICER ARRESTED RESPONDENT WHILE HE WAS STANDING AT THE REAR OF THE VEHICLE WHERE HE COULD NOT REACH INTO IT TO OBTAIN A WEAPON OR DESTROY CONTRABAND.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2000

STATE OF FLORIDA, Petitioner,

v.

ROBERT A. THOMAS, Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

The Respondent, Robert A. Thomas, respectfully requests that this Court deny the petition for writ of certiorari seeking review of the judgment and opinion of the Florida Supreme Court in this case.

OPINION BELOW

The opinion of the Florida Supreme Court, the highest state court of Florida which reviewed the merits of this case is reported as Thomas v. State, 761 So. 2d 1010 (Fla. 1999). A copy of the opinion is contained in Respondent's Appendix.

JURISDICTION

This Court lacks jurisdiction under 28 U.S.C. §1257(a), because the federal constitutional issue has not been resolved in the state court. In this case, the trial court granted the Respondent's motion to suppress physical evidence found in the automobile he was driving. The intermediate appellate court, the Second District Court of Appeal, reversed on the authority of New York v. Belton, 453 U.S. 454, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981). The Florida Supreme Court reversed, holding that the search of Respondent's vehicle could not be upheld as incident to his arrest outside the vehicle pursuant to Belton because the law enforcement officer did not initiate contact with the Respondent before he exited the vehicle.

The opinion of the Florida Supreme Court is not final because the court remanded the case to the trial court for further factual and legal decisions relating to the Respondent's federal claim. The Florida Supreme Court ordered the trial court to determine whether the factors in Chimel v. California, 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969), justified the search of the Respondent's vehicle. The court specifically directed the lower court to determine whether the officer's safety was endangered or whether the preservation of evidence was in jeopardy. Thomas at 1014. There has not yet been a final order suppressing the evidence issued from the highest court in the State of Florida. Therefore, the federal claim based on the Fourth and Fourteenth Amendments to

the United States Constitution has not been resolved in the state court system. For that reason, the decision is not a final decision as required by 28 U.S.C. §1257(a).

STATEMENT OF THE CASE

Respondent accepts the portion of the statement of the facts in Petitioner's brief which quotes the material facts contained in the opinion below, Thomas v. State, 761 So. 2d 1010 (Fla. 1991). Respondent also agrees with Petitioner's characterization of the procedural facts in the trial court and the Second District Court of Appeal on direct appeal. However, Respondent disagrees with Petitioner's characterization of the holding of the Florida Supreme Court below.

The Florida Supreme Court held "that Belton's bright-line rule is limited to situations where the law enforcement officer initiates contact with the defendant, either by actually confronting the defendant or by signalling confrontation with the defendant regardless of whether the defendant has been removed from or has exited the vehicle." Thomas at 1014. The court then found that since the Respondent did not exit the vehicle upon the direction of the law enforcement officer, Belton did not apply. The court then remanded the case to the trial court to determine whether the factors in Chimel v. California, 395 U. S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969), justified the search of the Respondent's vehicle. The court specifically directed the trial court to determine whether the officer's safety was endangered or whether the preservation of evidence was in jeopardy. Thomas.

REASONS WHY THE PETITION SHOULD BE DENIED

The Petition for Writ of Certiorari should be denied because the decision of the Florida Supreme Court in this case is not determinative of the federal Fourth and Fourteenth Amendment claim that the evidence was obtained pursuant to an unreasonable warrantless search of Respondent's vehicle.

Congress has limited the power of the United States Supreme Court to review state court decisions to "final judgments or decrees rendered by the highest court of a State in which a decision could be had." Jefferson v. City of Tarrant, Alabama, 522 U. S. 75, 118 S. Ct. 481, 139 L. Ed. 2d 433 (1997); 28 U.S.C. §1257(a). In Cox Broadcasting Corp. V. Cohn, 420 U. S. 469, 95 S. Ct. 1029, 43 L. Ed. 2d 328 (1974), this Court explained the concept of finality:

> Since 1789, Congress has granted this Court appellate jurisdiction with respect to state litigation only after the highest state court in which judgment could be had has rendered a '(f)inal judgment or decree.' Title 28 U.S.C. 1257 retains this limitation on our power to review cases coming from state courts. The Court has noted that '(c)onsiderations of English usage as well as those of judicial policy' would justify an interpretation of the final-judgment rule to preclude review 'where anything further remains to be determined by a State court, no matter how dissociated from the only federal issue that has finally been adjudicated by the highest court of the State.' Radio Station WOW, Inc. v. Johnson, 326 U.S. 120, 124, 65 S.Ct. 1475, 1478, 89 L.Ed. 2092 (1945).

In this case, the trial court granted the Respondent's motion to suppress physical evidence found in the automobile he was driving. On appeal taken by the State of Florida, the Second District Court of Appeal reversed on the authority of New York v. Belton, 453 U.S. 454, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981).- In its opinion reversing the district court, the Florida Supreme Court held that the search of Respondent's vehicle could not be upheld as incident to his arrest outside the vehicle pursuant to Belton. The court held "that Belton's bright-line rule is limited to situations where the law enforcement officer initiates contact with the defendant, either by actually confronting the defendant or by signalling confrontation with the defendant regardless of whether the defendant has been removed from or has exited the vehicle." Thomas, 761 So. 2d at 1014. The court then found that since the Respondent did not exit the vehicle upon the direction of the law enforcement officer, Belton did not apply. The court remanded the case to the trial court to determine whether the factors in Chimel v. California, 395 U. S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969), justified the search of the Respondent's vehicle. The court specifically directed the lower court to determine whether the officer's safety was endangered or whether the preservation of evidence was in jeopardy. Thomas at 1014.

The federal Fourth and Fourteenth Amendment issue of whether or not the search of the vehicle was constitutional has not been resolved in the state court system. In Cox, this Court noted there are at least four categories of cases in which this Court would

consider the determination of the federal issue as "final" even though further proceedings are contemplated in the lower state courts. However, each of these exceptions requires that the federal claim has been finally decided. Also, "[i]n most, if not all, of the cases in these categories, these additional proceedings would not require the decision of other federal questions that might also require review by the Court at a later date. . ." Cox 420 U.S. at 477. In this case, the federal claim is still undecided and the inquiry demanded upon remand would require the decision of another federal question, i.e., whether the search of the automobile is permissible under this Court's decision in Chimel.

Even if this Court had jurisdiction, Petitioner has not presented any compelling reason why the Court should exercise its jurisdiction. In this case, the Florida Supreme Court properly interpreted this Court's holding in Belton and properly refused to extend the holding in Belton to a situation in which an individual has voluntarily exited his vehicle before the officer confronted the individual or signalled confrontation with the individual. The Florida court refused to apply the "bright-line" rule of Belton in this case in which the probable cause to arrest the defendant did not develop until he was outside the vehicle, and where the officer had no reason to stop or detain the defendant until he was outside of the car.

In Belton, the officer lawfully stopped a car for speeding and arrested the occupants after smelling burnt marijuana and spotting

an envelope inside the car labelled in a way associated with marijuana. The car was searched after the occupants were escorted from the car. The Court in Belton was concerned only with the scope of the search, noting that Chimel limited the search pursuant to arrest to the "area from within which [an arrestee] might gain possession of a weapon or destructible evidence." Chimel 453 U.S. at 457-458. Chimel prohibits the routine search of any room other than that in which the arrest occurs and prohibits the search of desk drawers or other closed or concealed areas in the room itself.

The Belton Court was concerned with the ambiguity inherent in the phrase, "the area within the immediate control of the arrestee" as the it applied to automobiles. Belton 453 U. S. at 459-460. Given these limitations of the scope of a search incident to a lawful arrest, this Court created a "bright line" rule governing the scope of a search of the interior of an automobile incident to a lawful arrest of its occupants. That rule states that "when a policeman has made a lawful custodial arrest of the occupants of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile."

The decision of the Florida Supreme Court in the instant case upholds the "bright-line" rule of Belton and allows an officer to search a car even though an arrestee abandons the car during a pursuit. Without requiring that the officer confront the arrestee or signal confrontation while the arrestee while he is still in the vehicle, the officer and the court's would have a difficult time deciding whether or not the arrestee was a "recent occupant" of the

vehicle. In other words, officers in the field and reviewing courts would have to determine on a case-by-case basis whether the arrestee's occupancy of the vehicle was temporally and spatially related to his arrest.

In Lewis v. United States, 632 A.2d 383, 388 (D.C. 1993), the court explained:

> To extend the definition of "occupant" to include a person who has parked, locked and walked fifteen to twenty feet away from an automobile before being stopped and arrested, and, therefore, to consider that automobile subject to a warrantless search incident to arrest, would, as amicus suggests, indelibly blur the bright-line rule that the Supreme Court painstakingly drew in Belton. Indeed, it would defeat the whole purpose of having a bright-line rule, which, in reality, would be severed, without any limiting principle, from the foundation of its rationale in Chimel. (Citations omitted.)

Furthermore, although at first blush it may seem that the instant opinion conflicts with the decisions of other federal and state courts, a closer examination reveals that this case can be distinguished from many of Petitioner's cited cases on the facts. For example, in United States v. Snook, 88 F.3d 605 (8th Cir. 1996), the officer was aware from a radio dispatch that the defendant had an outstanding warrant before he confronted the defendant. At the time the officer arrived, Snook was just stepping out of his car and the motor was still running. When another officer reached in to shut off the ignition to protect Mr. Snook's property, the officer saw paraphernalia and a concealed weapon in the car.

In United States v. Karlin, 852 F.2d 968 (7th Cir. 1988), cert. denied, 489 U. S. 1021, 109 S. Ct. 1142, 103 L. Ed. 2d 202 (1989), a burglary suspect was apprehended by citizens. When police arrived, the officer found two citizens standing over Karlin who was lying face down on the ground with his foot still inside the open driver's door of a van. The officer then arrested Karlin and placed him in a squad car and searched the van. Karlin argued only that the firearm found in the van should have been suppressed because he was secured in the car a distance away from the van at the time of the search. Karlin did not argue that he was not a "recent occupant" of the vehicle. The Seventh Circuit held that Belton applied even though Karlin was not capable of reaching into the van at the time of the actual search.

In United States v. Franco, 981 F. 2d 470 (10th Cir. 1992), at the time of the defendant's arrest, he was actively involved in an undercover drug deal with a law enforcement officer. He returned to his car during the transaction to obtain the contraband and then after delivery of the contraband to the agent. Probable cause for the arrest was fully developed while the defendant was in the automobile; however, the agent had to complete the transaction before initiating the arrest. The circuit court found it significant that Mr. Franco had access to his vehicle during the course of the illegal conduct and that the vehicle was used to transport the contraband. Id. at 472-473. The court merely declined to hold that the agents had to actually arrest the defendant while still in the vehicle.

In Glasco v. Commonwealth, 257 Va. 433, 513 S.E. 137 (1999), the officer had a reasonable suspicion that the defendant was driving without a license before the defendant voluntarily left his vehicle. Furthermore, officer found contraband on the defendant's person immediately after his arrest.

In this case, the officer was waiting outside a residence in which arrests were being made for narcotics offenses. The officer saw Respondent drive up to the house, park his car in the driveway, and get out of the car. Respondent walked to the rear of the car where the officer met him and asked him his name and if he had a driver's license. A license check revealed an outstanding warrant for probation violation. The officer arrested Respondent and took him into the house. A search of the car revealed four small bags of methamphetamine. Not only did the officer not attempt to confront Respondent until he was outside his vehicle, the officer had no reason to detain Respondent until he was outside, standing at by the trunk of the car. For that reason, the opinion of the Florida Supreme Court correctly interpreted this Court's opinion in Belton.

CONCLUSION

For these reasons, the Respondent respectfully prays that this Court deny the Writ of Certiorari.

Respectfully submitted,

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Case No. 00-391

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2000

STATE OF FLORIDA, Petitioner,

v.

ROBERT A. THOMAS, Respondent.

APPENDIX TO RESPONSE TO PETITION
FOR WRIT OF CERTIORARI

APPENDIX

PAGE NO.

1. Opinion of the Florida Supreme Court in Thomas v. State, 761 So. 2d 1010 (Fla. 1999). . . A-1

Supreme Court of Florida.

Robert A. THOMAS, Petitioner,
v.
STATE of Florida, Respondent.

No. SC93070.

Oct. 14, 1999.
Rehearing Denied June 8, 2000.

After defendant's vehicle was searched incident to arrest on outstanding warrant, the Circuit Court, Polk County, Robert E. Pyle, J., granted defendant's motion to suppress methamphetamine and drug paraphernalia. The state appealed and the District Court of Appeal, Parker, C.J., 711 So.2d 1241, reversed. On certified conflict, the Supreme Court, Harding, C.J., held that warrantless search of vehicle incident to arrest was not valid absent threat to officer safety or necessity of preservation of evidence.

Decision of District Court of Appeal quashed and case remanded.

Wells, J., filed an opinion concurring in part and dissenting in part.

West Headnotes

[1] Arrest ⇐71.1(4.1)
35k71.1(4.1)

Warrantless search of vehicle incident to driver's arrest was not valid, absent threat to officer safety or necessity of preservation of evidence, where police officer's first contact with driver occurred after driver voluntarily exited the vehicle. U.S.C.A. Const.Amend. 4.

[2] Arrest ⇐71.1(4.1)
35k71.1(4.1)

Search of vehicle incident to arrest should not be invalidated merely because the defendant was outside of the automobile when arrested. U.S.C.A. Const.Amend. 4.

[3] Arrest ⇐71.1(4.1)
35k71.1(4.1)

Belton's bright-line rule, allowing search of vehicle incident to arrest, is limited to situations where the law enforcement officer initiates contact with the defendant, either by actually confronting the defendant or by signaling confrontation with the defendant, and the officer subsequently arrests the defendant regardless of whether the defendant has been removed from or has exited the automobile. U.S.C.A. Const.Amend. 4.

***1010** James Marion Moorman, Public Defender, and Cynthia J. Dodge, Assistant Public Defender, Tenth Judicial Circuit, Bartow, Florida, for Petitioner.

Robert A. Butterworth, Attorney General, Robert J. Krauss, Senior Assistant Attorney General, and John W. Klawikofsky, Assistant Attorney General, Tampa, Florida, for Respondent.

HARDING, C.J.

We have for review State v. Thomas, 711 So.2d 1241 (Fla. 2d DCA 1998), which expressly and directly conflicts with the opinion in State v. Howard, 538 So.2d 1279 (Fla. 5th DCA 1989). We have jurisdiction pursuant to article V, section 3(b)(3) of the Florida Constitution. For the reasons expressed below, we quash the decision of the Second District Court of Appeal in Thomas.

The facts of Thomas are as follows. On the evening in question, Robert Thomas entered the driveway of a residential home in which police were already present making arrests for narcotics offenses. While the detectives were in the residence, Officer Maney waited outside the residence in his patrol car. Officer Maney observed Thomas drive up to the house, park his car in the driveway, and get out of the vehicle. Upon exiting, Thomas walked to the rear of his vehicle, where Officer Maney met him and asked him his name and whether he had a driver's license. A check of Thomas's driver's license revealed an outstanding warrant for a probation violation. Officer Maney arrested Thomas and took him inside the residence. Officer Maney ***1011** originally was unaware that there were narcotics in Thomas's car. However, a subsequent search after Thomas's arrest resulted in the discovery of a plastic bag containing white residue on the bottom of the driver's side door and three small bags of a white substance in the glove box. All of the bags tested positive for methamphetamine. Five minutes elapsed between the time Thomas exited his car, was placed under arrest,

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and was brought into the residence and Officer Maney's subsequent search of the vehicle.

Following a hearing, the trial court granted Thomas's motion to suppress based on State v. Howard, 538 So.2d 1279 (Fla. 5th DCA 1989). The district court reversed, relying on New York v. Belton, 453 U.S. 454, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981), and held that because the search of the vehicle was not under a preplanned pretext to conduct a warrantless search, the search was lawful because it was incident to the valid arrest of Thomas. See Thomas, 711 So.2d at 1243.

In Howard, the defendant was followed by a police officer who had knowledge of an outstanding warrant for his arrest for a probation violation. Howard drove into the parking lot of a convenience store, and upon exiting his car with a pouch in his hand, he spotted the officer and placed the pouch back into his car and locked the door. After Howard was arrested on the warrant, he then instructed his brother who was present at the scene not to allow the police to search his car. However, the officer took the keys from Howard's pocket and searched the vehicle and found contraband.

The trial court suppressed the evidence and the district court affirmed. The district court held that the officer did not have probable cause for a warrantless search of the car. The district court stressed that Howard had already exited his car and locked it. The district court stated that even though the officer's suspicions may have justifiably been aroused, there was no legitimate need or reason to search Howard's car as incident to his valid arrest. See Howard, 538 So.2d at 1280.

The district court in Thomas distinguished Howard based on the fact that the officer in Howard was in reality conducting a preplanned warrantless search, whereas in Thomas the officer did not know Thomas, nor was he aware of the fact that there was an outstanding warrant for his arrest. In reaching its decision, the district court in Thomas relied on Belton's bright-line rule regarding searches incident to arrests: "[W]e hold that when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." New York v. Belton, 453 U.S. 454, 460, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981) (footnote omitted). While we do not question the practicality of this bright-line test, nor its application to arrests that are initiated by the conduct of an officer, we believe there must be a distinction drawn when an individual voluntarily exits his car without provocation from law enforcement personnel and without knowledge of their presence.

In Belton, a New York State policeman was passed by another automobile driving at an excessive rate of speed. The officer gave chase, overtook the speeding vehicle, and ordered its driver to pull over to the side of the road and stop. After comparing the vehicle registration to the driver's licenses of the driver and the three passengers, one of whom was Belton, the officer discovered that none of the men owned the car, nor were they related to the owner. In the course of verifying their identification, the officer smelled marijuana emanating from the vehicle, and also saw an envelope marked "Supergold" on the floor of the car, which he associated with marijuana. The officer then directed the men to get out of the car and placed them under arrest for unlawful possession of marijuana. He opened the envelope, which contained marijuana, searched the passenger ***1012** compartment, and found cocaine in a pocket of a leather jacket found in the car.

The United States Supreme Court in Belton referred to Chimel v. California, 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969), forthe proposition that a lawful custodial arrest justifies a contemporaneous search of an individual without a search warrant. The Court in Chimel concluded that such searches were necessary to (1) remove any weapons that the arrestee might have and (2) prevent the concealment or destruction of evidence. Relying on this reasoning, the Court in Belton held that when an officer has made a lawful arrest of the occupant of a vehicle, he may search the passenger compartment of that vehicle as long as it is in within the narrow time frame incident to the arrest. The Court did not state that the Chimel factors must be established before the vehicle can be searched; rather, the Court set up a bright-line rule to be applied in all cases. Florida's district courts have consistently applied this bright-line principle to analogous situations. See Shaw v. State, 449 So.2d 976 (Fla. 1st DCA 1984) (affirming denial of motion to suppress, even though defendant was handcuffed and placed in the officer's vehicle before the search was conducted); Chapas v. State, 404 So.2d 1102 (Fla. 2d DCA 1981) (upholding Belton search after defendant was ordered out of the car, arrested for driving while intoxicated, and placed in a police vehicle); State v. Valdes, 423 So.2d 944 (Fla. 3d DCA 1982) (holding the search of vehicle justified as

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a contemporaneous incident of the lawful arrest of defendant, notwithstanding that defendant was removed from the vehicle and placed in a nearby police cruiser); State v. Saufley, 574 So.2d 1207 (Fla. 5th DCA 1991) (upholding Belton search where defendant was pursued by an officer with siren on and lights flashing, arrested for driving under the influence, and placed in a patrol car, and two to three minutes later the officer searched the vehicle); see also United States v. White, 871 F.2d 41 (6th Cir.1989) (holding that Belton governs when an arrestee is removed from the car prior to the time of search); United States v. Karlin, 852 F.2d 968, 971-72 (7th Cir.1988); United States v. Cotton, 751 F.2d 1146, 1149 (10th Cir.1985); United States v. McCrady, 774 F.2d 868, 871-72 (8th Cir.1985).

However, when searches occur beyond the scope of Belton's bright-line intent, the factors in Chimel of officer safety and evidence preservation must be present in order for a search incident to arrest to be lawful. The Supreme Court addressed the parameters of Belton's application in Knowles v. Iowa, 525 U.S. 113, 119 S.Ct. 484, 142 L.Ed.2d 492 (1998). In Knowles, the defendant was only issued a traffic citation, and was not placed under arrest. Chief Justice Rehnquist, writing for the Court, held that a full search of an automobile pursuant to issuance of a citation for speeding violated the Fourth Amendment. The Court declared:

> Here we are asked to extend that "bright-line rule" to a situation where the concern for officer safety is not present to the same extent and the concern for the destruction or loss of evidence is not present at all. We decline to do so.

Id. at 118-19, 119 S.Ct. 484. Not finding the circumstances to be analogous to the circumstances that were the foundation to the Belton decision, the Court declined to apply the bright-line test. Id.

In examining the application and limitations of Belton, we believe the Second District Court of Appeal in Chapas was correct in interpreting Belton as "establishing a rule applicable to all cases involving the arrest of a recent occupant of an automobile." See Chapas, 404 So.2d at 1104. However, the court in Chapas also stated that "[i]n this case, as in the Belton case, appellant was the occupant of an automobile who had been removed from the vehicle and placed under arrest." Id. at 1104-05 The district court compared the facts of its case to Belton, found the circumstances to be analogous, and therefore ***1013** applied the bright-line rule. Hence, it can be inferred that the bright-line rule does not apply, as clarified by Knowles, when its application has been extended to a situation not contemplated by the Supreme Court in Belton. Rather, the Chimel factors of threat to officer safety or the necessity of preservation of evidence must be present to validate the search.

In State v. Vanderhorst, 419 So.2d 762 (Fla. 1st DCA 1982), the defendant was arrested for being intoxicated, and a subsequent search of his car revealed four quaaludes. The confrontation with the officer and the subsequent arrest and search were two-and-one-half hours after defendant's vehicle got stuck in the mud. The district court stated:

> Because Belton incorporated within its opinion that language from Chimel limiting the scope of an officer's search which is reasonably incident to a lawful arrest, it follows that unless the arrestee was himself a recent occupant of the vehicle, the Belton rule has no applicability.

Id. at 764. The district court stressed that Chimel 's justification was to deter an attempt made by the arrestee to remove any weapons that might aid in an escape, as well as to prevent the concealment or destruction of evidentiary items. Because the district court did not find the facts to be analogous to Belton, in that the timeliness was lacking, the court then shifted its focus to the concerns of officer safety and evidence preservation, which the court held could not be present at a time so far removed, and accordingly ruled the search was invalid. Again, when the foundation of Belton is extended beyond its original parameters, the bright- line rule is not automatically invoked.

[1] The issue for us to decide in the present case is whether Belton extends to a situation where the first contact the defendant has with the officer occurs after exiting the vehicle. We find the recent analysis of the Sixth Circuit Court of Appeals in United States v. Hudgins, 52 F.3d 115, 119 (6th Cir.1995), persuasive:

> The search of an automobile is generally reasonable even if the defendant has already been removed from the automobile to be searched and is under the control of the officer.
>
> Where the officer initiates contact with the defendant, either by actually confronting the defendant or by signaling confrontation with the defendant, while the defendant is still in the automobile, and the officer subsequently arrests the defendant (regardless of whether the defendant has been removed from or has exited the automobile), a subsequent search of the automobile's passenger compartments falls within the scope of Belton and

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will be upheld as reasonable. See United States v. Strahan, 984 F.2d 155, 156 (6th Cir.1993).... Our decisions have consistently upheld the search of the passenger compartment of an automobile when the officer initiated contact with the defendant while the defendant was still within the automobile later searched, regardless of whether the defendant was arrested while actually occupying the automobile or after having recently been removed from the automobile. See United States v. Thomas, 11 F.3d 620, 628 (6th Cir.1993); United States v. Patterson, 993 F.2d 121, 122-23 (6th Cir.1993) (per curiam); [United States v.] White, 871 F.2d [41], 44 [(6th Cir.1989)]; United States v. Hatfield, 815 F.2d 1068, 1071-72 (6th Cir.1987). However, where the defendant has voluntarily exited the automobile and begun walking away from the automobile before the officer has initiated contact with him, the case does not fall within Belton's bright-line rule, and a case-by-case analysis of the reasonableness of the search under Chimel becomes necessary. See Strahan, 984 F.2d at 159 (stating that Belton was inapplicable and concluding that the search was unreasonable under Chimel).
(Emphasis added; citations omitted.)

[2] We must caution, however, that in adopting this rationale, this Court is mindful ***1014** that the arrest and subsequent search should not be invalidated merely because the defendant is outside of the automobile. The occupants of a vehicle cannot avoid the consequences of Belton merely by stepping outside of the vehicle as the officers approach. See United States v. Mans, 999 F.2d 966, 968-69 (6th Cir.1993) (upholding Belton search where officer's first verbal contact with defendant was when defendant was outside the car on ground that officer had initiated contact with defendant earlier when defendant knew he was being followed by officer); State v. McLendon, 490 So.2d 1308, 1309 (Fla. 1st DCA 1986) (highlighting the fact that "[t]o distinguish between arrests of persons in the car from arrests of persons recently vacating the car serves to severely diminish the purpose of the Belton decision").

[3] In conclusion, we hold that Belton's bright-line rule is limited to situations where the law enforcement officer initiates contact with the defendant, either by actually confronting the defendant or by signaling confrontation with the defendant, and the officer subsequently arrests the defendant regardless of whether the defendant has been removed from or has exited the automobile. Applying the aforementioned analysis to the present situation, the record is clear that the defendant did not exit the vehicle upon the direction of the law enforcement officer. Because Belton does not apply, the trial court must determine whether the factors in Chimel justify the search of Thomas's vehicle. See Hudgins, 52 F.3d at 119 (concluding that where Belton is inapplicable, then "a case-by-case analysis of the reasonableness of the search under Chimel becomes necessary"). Based on the record in front of us, we are unable to ascertain whether Officer Maney's safety was endangered or whether the preservation of the evidence was in jeopardy. Under our interpretation, these findings are critical to a determination of the outcome, and therefore we quash the decision under review and remand for further proceedings consistent with this opinion.

It is so ordered.

SHAW, ANSTEAD, PARIENTE and LEWIS, JJ., concur.

WELLS, J., concurs in part and dissents in part with an opinion.

QUINCE, J., recused.

WELLS, J., concurring in part and dissenting in part.

I concur in the result in this case because I believe that the United States Supreme Court decision in Knowles v. Iowa, 525 U.S. 113, 119 S.Ct. 484, 142 L.Ed.2d 492 (1998), is a Supreme Court application of the Fourth Amendment to the United States Constitution that is sufficiently analogous to control the specific facts here. In this case there was no reasonable basis related to the vehicle to search Thomas; nor was there an arrest made related to the vehicle.

However, I dissent from the dicta which places serious limitations on New York v. Belton, 453 U.S. 454, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981), that are not within the United States Supreme Court's decision. Pursuant to article I, section 12, we are bound by interpretations in respect to the Fourth Amendment by the United States Supreme Court. In Belton, the court held only that "when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." Id. at 460, 101 S.Ct. 2860. Belton does not add as a condition "where the law enforcement officer initiates contact with the

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defendant either by actually confronting the defendant or signaling confrontation with the defendant." The reason for this bright-line rule is officer safety, which is equally as much a concern whether the officer initiates the contact, actually confronts the person, or the person voluntarily exits the vehicle as long as the connection ***1015** with the vehicle is proximate to the arrest.

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